

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	No. 3:17-cr-00438-JO
)	
v.)	
)	
RICHARD VERNON CARDOZA,)	ORDER
)	
)	
Defendant.)	

JONES, J.

Defendant Richard Vernon Cardoza (Cardoza), age 58, moves to reduce his sentence under 18 U.S.C. § 3582(c)(1)(A)(i), requesting that his sentence be reduced to time served and that he be released to live at the home of his elderly parents. ECF No. 58. Cardoza has served less than 25% of his 84-month sentence for distributing child pornography. He asserts that his age, medical conditions (obesity and asthma), and the conditions at FCI Terminal Island, where Cardoza is housed, make him particularly vulnerable to the novel coronavirus pandemic. The government opposes his motion. Based on the following, the Court DENIES the motion.

A district court generally “may not modify a term of imprisonment once it has been imposed.” 18 U.S.C. § 3582(c); *see Dillon v. United States*, 560 U.S. 817, 824-25 (2010). However, Congress has expressly authorized a district court to modify a defendant’s sentence in three limited circumstances, one of which is when granting a motion for compassionate release

under 18 U.S.C. § 3582(c)(1)(A). Although the compassionate release statute previously permitted sentence reductions only upon motion of the Director of the Bureau of Prisons (BOP), Congress expanded the statute in the First Step Act of 2018. Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239 (Dec. 21, 2018) (FSA). Now, a defendant may bring a motion for compassionate release and a court may reduce a defendant's sentence if the defendant shows that "extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission" 18 U.S.C. § 3582(c)(1)(A)(i).

In opposing Cardoza's motion, the Government documents that Cardoza has received two doses of the Pfizer-BioNTech COVID-19 vaccine. ECF No. 66-1 at 116-18. According to the Centers for Disease Control and Prevention (CDC), "the Pfizer-BioNTech vaccine was 95% effective at preventing laboratory-confirmed COVID-19 illness in people without evidence of previous infection." [https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html#:~:text=Information%20on%20how%20well%20the%20vaccine%20works)

[BioNTech.html#:~:text=Information%20on%20how%20well%20the%20vaccine%20works](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html#:~:text=Information%20on%20how%20well%20the%20vaccine%20works). In the early days of the pandemic, FCI Terminal Island had a high rate of infection among the inmate population. But Cardoza tested negative for COVID-19 six separate times between April 25, 2020 and February 16, 2021. ECF No. 66-1 at 75, 100, 102, 107, 110, 113, and 118. He was placed in quarantine after being exposed to a COVID-positive inmate. Currently, FCI Terminal Island reports no active cases of inmates COVID-19 among inmates.

<https://www.bop.gov/coronavirus/> (March 8, 2021).

In August 2019, Cardoza had a BMI of 33.5. ECF 60-2 at 8. A year later, his BMI measured 30.4, which barely puts him in the obese category. *Id.* at 4. Again in August 2019,

Cardoza noted that although he had asthma, he denied wheezing and reported that he “hardly” used his inhaler. ECF 66-1 at 14. Recently, his asthma appears to have worsened, but he is receiving attentive medical care from the BOP medical staff. (“He was seen on Friday 2/26/2021 for SOB and treated with albuterol inhaler with good relief.”) ECF 71-2 at 1. Considering Cardoza’s vaccination and the low rate of infection at FCI Terminal Island, the Court concludes that Cardoza has not proven “extraordinary and compelling reasons” justifying his release pursuant to 18 U.S.C. § 3582(c)(1)(A). *See, e.g., United States v. Cortez*, No. CR-18-00858-01-PHX-SPL, 2021 WL 689923 *1 (D. Arizona, Feb. 23, 2021) (denying defendant’s motion based on his vaccination and that “Defendant has not shown a susceptibility to the virus, and . . . seeks compassionate release based solely on that basis”); *United States v. Ballenger*, No. CR16-5535 BHS, 2021 WL 308814, at *4 (W.D. Wash. Jan. 29, 2021) (denying compassionate release based on defendant’s vaccination because “[a]lthough it is currently unknown how long immunity produced by vaccination lasts, based on evidence from clinic trials, the Pfizer-BioNTECH vaccine [defendant] received was 95% effective at preventing COVID-19 illness. The defendant has the burden to establish his entitlement to compassionate release. He has not met that burden.”).

Cardoza’s Motion for Reduced Sentence, ECF No. 58, is DENIED.

IT IS SO ORDERED.

Dated the 11th of March, 2021.

/s/ Robert E. Jones

Robert E. Jones
Senior United States District Judge